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ORDINANCE NO. 5388

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, PERTAINING TO THE ZONING ORDINANCE OF THE MESA CITY CODE; AMENDING SECTION 11-31-34 REGARDING THE SEPARATION OF MEDICAL MARIJUANA FACILITIES FROM CHURCHES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That Sections 11-31-34(A)(4) and 11-31-34(B)(2) of the Mesa City Code is hereby amended as follows:

11-31-34 Medical Marijuana Facilities

- A. Medical Marijuana Dispensaries are permitted only in the LI and GI Districts, provided that evidence has been demonstrated of compliance with all of the following:
4. The dispensary shall be located a minimum distance of 1,200-feet from the following land uses:
 - a. Churches **LOCATED IN RS, RM, DR, T3N, T4N, OR T5N DISTRICTS;**
 - b. Libraries; ~~and~~
 - c. Schools; **AND**
 - d. Public Parks located in the LI or GI districts.
- B. Medical Marijuana Cultivation Facilities ("Cultivation Facilities") and medical marijuana infusion facilities (Infusion Facility), as these terms are defined by this Ordinance, are permitted only in the LI and GI districts, subject to compliance with all of the following:
2. The Location of the Cultivation and/or Infusion Facility shall be a minimum distance of 1,200 feet from any of the following:
 - a. Churches **LOCATED IN RS, RM, DR, T3N, T4N, OR T5N DISTRICTS;**
 - b. Libraries;
 - c. Schools; **AND**
 - ~~e~~.D. Public parks in the LI or GI districts.

Section 2: PENALTY.

CIVIL PENALTIES:

- A. Any owner, occupant or responsible party who is found responsible for a civil violation of this Ordinance, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than \$150 or more than \$1,500, per citation. A second finding of responsibility within 24 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than \$250 or more than \$2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than \$500 or more than \$2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City's Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges.
- B. The 36-month provision of subsection (A) of this Section shall be calculated by the dates the violations were committed. The owner, occupant, or responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the owner or responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal.
- C. Each day in which a violation of this Ordinance continues, or the failure to perform any act or duty required by this Ordinance or by the Civil Hearing Officer continues, shall constitute a separate civil offense.

HABITUAL OFFENDER:

- A. A person who commits a violation of this Ordinance after previously having been found responsible for committing 3 or more civil violations of this Ordinance within a 24-month period — whether by admission, by payment of the fine, by default, or by judgment after hearing — shall be guilty of a class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal class 1 complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 24-month period under this paragraph, the dates of the commission of the offenses are the determining factor.
- B. Upon conviction of a violation of this Subsection, the Court may impose a sentence or incarceration not to exceed 6 months in jail; or a fine not to exceed \$2,500, exclusive of penalty assessments prescribed by law; or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than \$500 for each count upon which a conviction has been obtained. A judge

shall not grant probation to or suspend any part or all of the imposition or execution of a sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection.

- C. Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure.

Section 3: EFFECTIVE DATE. The effective date of this Ordinance shall be thirty (30) days following adoption by the Mesa City Council.

Section 4: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 26th day of June, 2017.



APPROVED:

David Luna

Vice Mayor

ATTEST:

DeAnn Mickelson

City Clerk

EFFECTIVE DATE: